unless the alleged breach results from the lessor's own act, or some act authorized by him, *Harrison, Ainslie & Co.* v. *Muncaster* [1891], 2 Q. B. 680; *Sanderson* v. *Berwick-on-Tweed Corporation* (1884), 13 Q. B. D. 547; *Jeffreys* v. *Evans,* 19 C. B. (N. S.) 246; *Jaeger* v. *Mansions Consolidated* (1903), 87 L. T. 690; *Gilhooley* v. *Washington,* 4 N. Y. 217; *De Witt* v. *Pierson,* 112 Mass. 8. In this country eviction is necessary to support an action on a covenant for quiet enjoyment, whether in a lease or a deed, *Borcel* v. *Lawton,* 90 N. Y. 293, 43 Am. Dec. 170; *Avery* v. *Dougherty,* 102 Ind. 443; *Callahan* v. *Goldman,* 216 Mass. 238, 103 N. E. 689; *Roth* v. *Adams,* 185 Mass. 341, 70 N. E. 445; *American Ice Co.* v. *Pocano Spring Co.,* 183 Fed. 193. In some jurisdictions, if the act of the landlord is such as to substantially deprive the lessee of the consideration which he should receive for his payment of rent he may recover under the covenant, on the theory of a constructive eviction, *Pendleton* v. *Dyett,* 8 Cowen (N. Y.), 727; *Sprague* v. *Baker,* 17 Mass. 586; *Brown* v. *Holyoke Water Power Co.,* 152 Mass. 463, 25 N. E. 966; but there can be no constructive eviction unless the lessee actually leaves the premises, *Barrett* v. *Boddie,* 158 Ill. 479; *Dewitt* v. *Pierson,* supra; *Hoberg* v. *May,* 153 Pa. St. 216; and the abandonment must take place within a reasonable time, *Crommelin* v. *Thiers,* 31 Ala. 412, 70 Am. Dec. 499. The older English cases indicate that the early rule in that jurisdiction required proof of eviction as a basis of recovery on the covenant, *Dennett* v. *Atherton,* L. R. 7 Q. B. 316; *Upton* v. *Townsend,* 17 C. B. 30, 84 E. C. L. Rep. 30. Later cases, however, give the covenant a wider scope, holding that it may be broken although neither the title nor possession are affected, the true question being, according to these authorities, whether or not there has been a substantial interference with the ordinary and lawful enjoyment of the tenant, and this to be determined by a jury, *Sanderson* v. *Berwick-on-Tweed Corp.,* supra, *Budd-Scott* v. *Caniell* [1902], 2 K. B. 351; *Manchester Ry.* v. *Anderson* [1898], 2 Ch. 394; *Williams* v. *Gabriel* [1906], 1 K. B. 155. The more liberal construction which these courts are now making of the covenant when contained in a lease seems highly proper.

MUNICIPAL CORPORATIONS — LIABILITY FOR NEGLIGENCE — PUBLIC PARKS. — Plaintiff, a four-year-old child, was bitten by a coyote negligently kept in a wire cage in a public park maintained by the city. *Held,* maintenance of parks is a governmental function, in the performance of which the city is not liable for the negligence of its agents or servants. *Hibbard* v. *City of Wichita* (Kans. 1916), 159 Pac. 399.

It is a settled principle that, with one or two well recognized exceptions, a municipality is not liable for the negligence of its servants or agents in the performance of governmental functions, as distinguished from municipal functions. There is less uniformity as to what functions are properly classed as governmental. Most courts, when the question has arisen, have held, as in the principal case, that the maintenance of public parks is a governmental function, not within any exception to the rule of exemption from liability, and therefore that a city is not liable for injuries caused by negligence in the operation and management of parks, unless such liability is expressly

imposed by statute. *Board of Park Commissioners* v. *Prinz,* 127 Ky. 460; *Harper* v. *City of Topeka,* 92 Kan. 11, 51 L. R. A. N. S. 1032; *Mayor &c* v. *Burns,* 131 Tenn. 281; *Blair* v. *Granger,* 24 R. I. 17; *Russell* v. *Tacoma,* 8 Wash. 156; *Brisbing* v. *Asbury Park,* 80 N. J. L. 416, 33 L. R. A. N. S. 523; *Steele* v. *City of Boston,* 128 Mass. 583; *Clark* v. *Waltham,* 128 Mass. 567. See also *Higginson* v. *Treas. etc. of Boston,* 212 Mass. 583, 24 Cent. L. J. 463. It has been held in some cases, however, that the maintenance of parks is not necessarily a governmental function, and that the city is liable for negligence in their management. *Jones* v. *City of New Haven,* 34 Conn. 1; *City of Denver* v. *Spencer,* 34 Colo. 270, 82 Pac. 590, 2 L. R. A. N. S. 147. And see *Board of Park Commissioners* v. *Detroit,* 28 Mich. 228; *Gartland* v. *New York Zoological Society,* 135 App. Div. (N. Y.) 163; and *State* v. *Schweickardt,* 109 Mo. 496, 512, in support of this doctrine. There is some tendency to apply a rule of natural justice rather than strict logic to cases of injuries caused by the negligence of municipal officers and servants, and many courts have held the city liable in cases of this kind, either by putting the case within some exception to the rule of exemption from liability (*Ackeret* v. *City of Minneapolis,* 129 Minn. 190, 151 N. W. 976; *Capp* v. *St. Louis,* 251 Mo. 345, 158 S. W. 616) or by applying rules applicable to private individuals, without regard to whether the maintenance of parks is governmental or not (*Glase* v. *City of Philadelphia,* 169 Pa. 488, 32 Atl. 600; *Carey* v. *Kansas City,* 187 Mo. 715; *Weber* v. *Harrisburg,* 216 Pa. 117, 64 Atl. 905; *Silverman* v. *City of New York,* 114 N. Y. Supp. 59; *Canon City* v. *Cox,* 55 Colo. 264, 133 Pac. 1040; *Barthold* v. *Philadelphia,* 154 Pa. 109, 26 Atl. 304). The principal case is in line with the strict rule, and probably with the weight of authority. WEST, J., dissented, basing his opinion particularly on two prior Kansas decisions (*Murphy* v. *Fairmont Township,* 89 Kans. 760; *Kansas City* v. *Siese,* 71 Kans. 283). These cases, however, seem readily distinguishable from the principal case. The former was an action against a township to abate a nuisance and to recover damages for injuries sustained thereby, in which the court held that the plaintiff could not "under the settled rules of law" recover damages for the injuries already sustained, though he could enjoin the continuance of such nuisance; and the latter was a suit for damages caused by injuries resulting from a nuisance maintained by the city, not in the performance of any governmental function, and the question presented in the principal case was not touched upon in that decision at all. On the other hand, the case of *Fisher* v. *Township,* 87 Kans. 674, is strong authority in support of the decision in the principal case; and it can hardly be said that "the dissenting opinion is in greater consonance with the Kansas authorities"—though see XXVI Yale L. J., 77, to the contrary.

NEGLIGENCE—DUTY OF MANUFACTURER TO INSPECT GOODS.—Defendants, who were manufacturers, sold step-ladders to a retailer and one of them was purchased by plaintiff. In using the ladder it broke, and plaintiff received a fall. It did not appear whether the defendant had tested the step ladders before putting them on the market. *Held,* (though deciding for defendant on other grounds) that the manufacturer was bound to test the step ladders